IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2006

CORAM

THE HONOURABLE MR. JUSTICE P.SATHASIVAM
AND
THE HONOURABLE MR. JUSTICE S.TAMILVANAN

W.P.Nos.22111, 24118 and 31264 to 31266 of 2004 and 1627 of 2005
and
W.P.M.P.Nos.26752, 29273, 37277 to 27279 of 2004 & 1830 of 2005

W.P.No.22111 of 2004

1.S.Ravi
2.Bheemaraya
3.M.Petchi Muthu
4.M.R.Babu
5.Harry Joseph
6.A.G.Doddamani
7.Syed Anwar
8.M.Sittarse
9.V.J.Boniface
10.S.Shiva Kumar
11.M.L.Chandre Gowda ... Petitioners.

Vs

1.The Union of India rep. by the Secretary,
Ministry of Home Affairs,New Delhi.

2.The Director General,Central Industrial Security Force,
CISF Headquarters,Block No.13, CGO Complex,
Lodhi Road, New Delhi.

3.The Deputy Inspector General (Personnel),
CISF Headquarters, Block No.13, CGO Complex,
Lodhi Road, New Delhi.

4. The Group Commandant, CISF,
D-Block, Rajaji Bhavan, Besant Nagar, Chennai-600 090.

5. The Deputy Commandant, CISF Unit, CPCL,
Manali, Chennai-600 068. ... Respondents in WP.22111/04

1. V. Chandran
2. G. K. Pillai
3. T. A. Reddy

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4. M. Raja
5. M. Mahadevan
6. P. Ayyavoo ...Petitioner in WP.24118/04

Vs

1.The Director General,
CISF 30, CGO Complex,
Lodhi Road, New Delhi 110 003

2.The Deputy Inspector General
CISF 30, CGO Complex,
Lodhi Road, New Delhi.110 003

3. The Commandant,
CISF VI Reserve Battalion,
Suraksha Campus
Arakonam ...Respondents in WP.24118/04

M. Ramasamy ...Petitioner in WP.31264/04
Baranasi Bhui ...Petitioner in WP.31265/04
S. Govinda Raj ...Petitioner in WP.31266/04
G. C. Reddy. ...Petitioner in WP.1627/05

vs

1.The Union of India rep. by the Secretary,
Ministry of Home Affairs,New Delhi.

2.The Director General,Central Industrial Security Force,
CISF Headquarters,Block No.13, CGO Complex,
Lodhi Road, New Delhi.

3.The Deputy Inspector Commandant
CISF Unit CPCL, Manali - 600068. ...Respondents in WP.31264/04 to WP.31266/04 & WP.1627/05

Prayer:-
WP.No.22111/04:- Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 5th respondent in Order in No.F-20017/CISF/CPCL/Misc/Accts/O.D./04/868 dated 15.07.2004 issued pursuant to the Order of the 4th respondent in No.E-31014/ACP/GHC/2004/1647 dated 20.04.2004 and the order of the 3rd respondent in No.E-42099/17/2002/Estt.I/1353 dated 07.11.2003 and quash the same and direct the respondents to restore the grant of financial upgradation under the Assured Career Progression Scheme with effect from the date of the petitioner's eligibility and grant them all consequential benefits.

WP.No.24118/04:- Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari to call for the records

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relating to the proceedings No. E 42099/17/2002/Estt.I/353 dated 07.11.2003 to the 2nd respondent and the order to the third respondent in No.F27015/CISF/6RB/ACCTS/PF/04-2305 dated 11.3.2004 and quash the same.

WP.No.31264/04 to WP.31266/04:- Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified mandamus to call for the records relating to the impugned order of the third respondent in order No.F20017/CISF/CPCL/ACCTS/OD/04-1891, 1892 & 1904 dated 14.10.2004 and quash the same.

WP.No.1627/05:- Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari to call for the records in connection with the impugned order of the third respondent in No.F.20017/CISF/CPCL/ACCTS/OD/04-2138 dated 02.12.2004 and quash the same.

For Petitioners : Mr.T.N.Sugesh in W.P.No.22111 & 31264 to 31266/04
Mr.M.Sureshkumar in W.P.No.24118/04
Mr.S.N.Narasimhulu in W.P.No.1627/05

For Respondents : Mr.P.Wilson,
Asst. Solicitor General of India
for R1 in W.P.No.22111/04.

Mr.L.N.Praghasham, SCGSC for
R4 & R5 in W.P.No.22111 &
For RR1 to 3 in 24118/04.

Mr.M.Dhamodharan, SCGSC, for RR1 to 3
in W.P.Nos.31264 to 31267/04.

Mr.A.S.Vijayaraghavan, ACGSC for RR1 to 3
in W.P.No.1627/05.

COMMON ORDER

(Order of the Court was made by P.SATHASIVAM,J.)

Since the issue raised in all these writ petitions is one and the same and identical, they are being disposed of by the following common order.

2. For convenience, we shall refer the petitioners in W.P.No.22111 of 2004. According to them, all of them were initially appointed in the Central Industrial Security Force as Constables and all of them have now put in more than 15 years of continuous service in the Force since the date of their initial appointment. The Government of India had issued orders dated 09.08.1999 providing Assured Career Progression (ACP) Scheme for the Central Government employees, whereby it was decided to grant two financial upgradations, as recommended by the Fifth Central Pay

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Commission, to the employees, on completion of 12 years and 24 years of regular service respectively. The ACP Scheme was to become operational from the date of issue of the said order. The financial upgradation was to be granted from the date of completion of the eligibility period prescribed under the Scheme or from the date of issue of the said instructions whichever is later. It was stipulated that the financial upgradation shall be available only, if no regular promotions during the prescribed periods (12 years and 24 years) have been availed by an employee. It was further stipulated that fulfillment of the normal promotion norms shall be ensured for grant of benefits under the ACP Scheme.

3. It is further stated that all the petitioners have put in more than 15 years of continuous service in the post of Constables. All of them were granted financial upgradation under ACP Scheme, as were all qualified. All of them have been receiving the said benefits. They have also undergone Promotion Cadre Course.

4. The Deputy Inspector General (Personnel) issued proceedings dated 7.11.2003 directing that in view of the observations of Internal Audit Party of the Ministry of Home Affairs, it has been decided that the recovery of pay and allowances may be made pertaining to the period from the date of upgradation of scale under ACP Scheme to the date of stoppage of such benefits on account of failure to submit medical unfitness certificate or expressing their inability to undergo PCC on medical grounds. Pursuant to the said order, the Group Commandant has now issued an order dated 20.4.2004 directing cessation of the financial upgradation benefits with effect from the date on which they were granted and consequently, the Deputy Commandant, CISF Unit, CPCL, has now issued an order dated 15.07.2004 directing recovery of pay towards alleged over-payment from the monthly salary of July 2004 onwards. The said orders are under challenge in these writ petitions.

5. It is stated that no notice or opportunity was afforded to them prior to the passing of the order of recovery. The initial grant of final upgradation was done in accordance with the Rules. All of them are also normally entitled to three attempts to pass the Promotion Cadre Course. Most of them have qualified the Promotion Cadre Course and thus, are entitled to restoration of financial upgradation already granted. The impugned order of recovery is in contravention of the Scheme formulated by the Central Government in the year 1999. Under those circumstances, according to the petitioners, having no other effective alternative remedy, they filed the above writ petitions.

6. The 4th respondent, viz., The Group Commandant, CISF Group Headquarters, Chennai-600 090, has filed a counter affidavit, highlighting their stand. After narrating the salient features of the Scheme, eligibility etc., submitted that inasmuch as the petitioners submitted their unwillingness/failed to qualify the Promotion Cadre Course (PCC), they become ineligible for the benefit under the Scheme. Accordingly, the benefits given to them on conditional basis have been withdrawn by the

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Department. It is further stated that it is only due to the fault of the petitioners, they are unable to avail ACP benefits and the personnel, who qualified the PCC, are drawing the benefit without any disruption. Before effecting recovery of over payment in easy and convenient instalments from the petitioners, they have been given information by the Deputy Commandant, CISF Unit, CPCL, Manali, by order dated 15.07.2004. Hence, there is no violation of any law in recovering the ineligible amount paid to the petitioners from the Government Account. Apart from the above information, the officer has also furnished necessary particulars in the form of Annexure 'A'.

7. Though similar averments have been made by the petitioners as well as the respondents in the form of affidavits and counter affidavits respectively, we are of the view that there is no need to refer the same separately.

8. Heard the learned counsel for the petitioners as well as the respondents.

9. It is the specific case of the petitioners that all of them satisfied the conditions prescribed in the Scheme formulated by the Department. Since we referred to the factual details in W.P.No.22111 of 2004, it is worthwhile to refer the factual information furnished in the affidavit filed in the said writ petition. Among those information, the following statistics, viz., the name of the persons concerned, their date of appointment and the date with effect from which ACP was granted and the date of undergoing PCC etc. are relevant. Those particulars are availed in Para. Nos.5 & 6 of the affidavit, which are extracted here under:-

S.No.	Name	Date of appointment	Date w.e.f. Which ACP was granted
1	S.Ravi	20/1/1986	9/8/99
2	Bheemarya	5/6/85	9/8/99
3	M.Petchi Muthu	6/4/88	1/1/01
4	M.R.Babu	29/1/1986	9/9/99
5	Harry Joseph	31/12/1986	9/8/99
6	A.G.Doddamani	1/3/88	1/3/00
7	Syed Anwar	23/7/1986	9/8/99
8	M.Sittarse	30/9/1987	7/5/01
9	V.J.Boniface	1/3/88	10/3/00
10	S.Shiva Kumar	13/7/1985	9/8/99
11	M.L.Chandre Gowda	1/3/00	1/3/00

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Name	Date of undergoing PCC Course
S.Ravi	07.07.2003 to 24.08.2003 (Qualified vide Order No.312/03 dated 05.09.2003) Earlier submitted unwillingness on 02.11.2002.
Bheemarya	13.05.2002 to 29.06.2002 (Failed - Order No.136/02 dated 16.08.2002) 2003 (Failed - Order No.38/03 dated 12.03.2003)
M.Petchi Muthu	05.05.2003 to 21.06.2003(Failed in III Paper) 22.08.2003 to 24.08.2003 (Qualified vide Order No.373/03 dated 05.09.2003)
M.R.Babu	16.09.2002 to 02.11.2002 (Failed in Part-I and Firing) 05.03.2003 to 07.03.2003(Qualified in Part-I and firing Test vide Order No.189/03 DT 19.10.2003)
Harry Joseph	06.01.2003 to 22.02.2003 (Qualified vide Order No.114/03 dated 30.05.2003)Earlier submitted unwillingness on 07.11.2002 on Medical Grounds.
A.G.Doddamani	03.03.2003 to 19.04.2003 (Qualified vide Order No.92/03 dated 30.05.2003) Earlier submitted unwillingness on 07.11.2002 on Medical Grounds.
Syed Anwar	03.03.2003 to 19.04.2003 (Qualified vide Order No.92/03 dated 08.07.2003) Earlier submitted unwillingness on 07.11.2002
M.Sittarse	06.01.2003 to 22.02.2003 (Failed in Drill) 25.08.2003 to 30.08.2003 (Qualified vide Order No.119/2003 dated 6/7.10.2003)
V.J.Boniface	03.03.2003 to 19.04.2003 (Qualified vide Order No.92/03 dated 08.07.2003)Earlier submitted unwillingness on 13.02.2003
S.Shiva Kumar	13.05.2002 to 29.06.2002 (Failed in firing) Subsequently qualified vide Order No.220/02 Dated 02.12.2002)
M.L.Chandre Gowda	07.07.2003 to 24.08.2003 (Qualified vide Order No.331/03 dated 11.09.2003)Earlier submitted unwillingness on account of his daughter's admission to hospital and treatment following a road accident.

10. Apart from the above factual information with reference to the date on which they qualified and the particulars regarding P.C.C. Course etc., they also asserted that as per the Rule, they are entitled three attempts to pass Promotion Cadre Course (PCC). It is also their definite case that most of them have qualified the PCC and thus, are entitled to restoration of financial upgradation already granted. Though in the counter affidavit, it is pointed out that some of them submitted their unwillingness and not qualified, while analysing the entire details

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furnished in the affidavit as well as the annexure to the counter affidavit and the Rules applicable to the petitioners, we are of the view that they qualified within the permissible period. In this regard, the learned counsel appearing for the petitioners heavily relied on CISF Circular No.39/1993 dated 23/26-11-1993, which reads as under:-

DIRECTOR GENERAL
CENTRAL INDUSTRIAL SECURITY FORCE
(MINISTRY OF HOME AFFAIRS)
13 CGO'S COMPLEX
LODHI ROAD
NEW DELHI-3

TRAINING
No.E-37016/4/92/TRG/4548 Dated:23/26-11-1993

CISF Circular No.39/1993
Subject: Promotion Cadre Course - Failure Policy.

In continuation to CISF Circular No.15/92 on the above mentioned subject, it became imperative to review the promotion cadre course failure policy at FHQ in view of large number of failures being reported from different training institutions in the promotion cadre courses in various ranks, i.e., Constable to Inspector. I has now been decided, after due consideration, that hence forth third chance will be afforded to those personnel who have not been able to clear the promotion cadre course after availing of the second chance. However, in exceptional cases only fourth chance could be given by only IG/HQrs at FHQ on special recommendation from the concerned DISG. While recommending for the fourth chance concerned DISG will have to justify the reason for such recommendation.

This has the approval of DG/CISF.

SD/-
(R.K.Niyogi)
Dy.Inspector General/TRG

Distribution:
All Units/HQrs/TRG/Institutions
Internal Section of FHQ New Delhi.
(E-37016/4/92/TRG/2427/dated 4.10.06.1992 CIRCULAR No.15/92)

11. It is also brought to our notice that the same conditions/instructions have been re-stated in the subsequent proceedings, viz., CISF Circular No.E-31014/13/CPCL/Adm/2005-3747 dated 1st November 2005.

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12. In the light of the instructions/Circulars as referred above and in view of the assertion of the petitioners regarding their eligibility and qualification within the prescribed period, we are of the view that the respondents are not justified in initiating recovery proceedings, merely on the basis of certain observations of the Internal Audit Party of the Ministry of Home Affairs. On the other hand, the particulars furnished/ referred above amply support the case of the petitioners.

13. Under these circumstances, the impugned orders/proceedings in all these writ petitions are quashed and a direction is issued to the respondents to grant financial upgradation under the Assured Career Progression Scheme with effect from the date of the petitioner's eligibility and grant them all consequential benefits. The writ petitions are allowed on the above terms. Consequently, connected W.P.M.Ps. are closed. No costs.

bs/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary,
The Union of India
Ministry of Home Affairs,New Delhi.

2.The Director General,
Central Industrial Security Force,
CISF Headquarters,Block No.13, CGO Complex,
Lodhi Road, New Delhi.

3.The Deputy Inspector General (Personnel),
CISF Headquarters,
Block No.13, CGO Complex,
Lodhi Road, New Delhi.

4. The Group Commandant, CISF,
D-Block, Rajaji Bhavan,
Besant Nagar, Chennai-600 090.

5. The Deputy Commandant,
CISF Unit, CPCL,
Manali, Chennai-600 068.

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6. The Commandant
   CISF VI, Reserve Battalion
   Suraksha Campus, Arakonam.

+ 1 cc to Mr. P. Wilson, Asst Solicitor General of India SR No.59750
+ 1 cc to Mr. L.N. Praghasam, Advocate, SR No.59638
+ 1 cc to Mr. A.S. Vijayaraghavan, Advocate, SR No.59893
+ 1 cc to Mr. S.N. Narasimhulu, Advocate, SR No.59614
+ 2 ccs to Mr. M. Dhamodharan, Advocate, SR No.59702 & 59703
+ 4 ccs to Mr. T. N. Suresh, Advocate, SR No.60045 & 60048
+ 1 cc to Mr. M.M. Sureshkumar, Advocate, SR No.59586

W.P.Nos.22111 24118
and 31264 to 31266 of 2004
and 1627 of 2005

GGK(CO)
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